

FACTSHEET

TITLE: CHANGE OF ZONE NO. 05004, Pine Garden

Planned Unit Development, requested by Brian D.

Carstens and Associates on behalf of Realty Trust Group, for a change of zone from AG Agricultural to R-3 Residential; and for approval of a development plan which proposes modifications to the Zoning Ordinance and Land Subdivision Ordinance to allow 28 multi-family units and 22,000 square feet of commercial/retail floor area, on property generally located at S. 84th Street and Old Cheney Road.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission

Public Hearing: 05/11/05

Administrative Action: 05/11/05

RECOMMENDATION: Conditional Approval, with amendment (9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes').

STAFF RECOMMENDATION: Conditional Approval

1. The purpose of this proposal is to change the zoning designation from AG Agricultural to R-3 Residential under a Planned Unit Development designation, and to approve a development plan for 28 dwelling units and 22,000 sq. ft. of commercial floor area with the following waiver requests: to waive the preliminary plat process; to reduce private roadway width from 27 feet to 22 feet; to reduce the front and rear yard setbacks on Lots 1 through 20; lot width-to-depth ratio; cul-de-sac radius for South 83rd Court; to allow up to two non-resident employees for home occupations in units 11 through 20; to allow up to 50% of the floor area in units 11 through 20 to be used for home occupations; and to allow commercial lots without frontage or access to a public street.
2. Staff believes that residential use with access limited to Wendell Way, as shown in the Comprehensive Plan, is a reasonable use for this property. However, we held several meetings with the applicant and his agents on developing a mixed-use development with right turn movements allowed to 84th Street and Old Cheney Road. An agreement was reached and the applicant's agent submitted the PUD for Planning Commission hearing. An important element of that agreement was the inclusion of Note #18, Condition #1.1.4 (see page 20), which prohibits a number of high-traffic generating commercial uses. The Planning Commission approved the PUD as submitted and recommended by staff in February. After that hearing, the applicant claimed that he had never agreed to the limitations in Note #18 and attempted to propose the change on page 19 for the City Council. Staff indicated that this proposed change fundamentally changed the facts on which the Planning Commission voted, and they should consider this change before a City Council hearing. The applicant agreed and a new hearing was scheduled in May with the Planning Commission.
3. The applicant's testimony is found on p.13, including a request to amend Condition #1.2.2, which deals with grading of the commercial area north of Old Cheney Road. Staff agreed with this amendment. The applicant advised that the only reason this application has been returned to the Planning Commission is because of Note #18 in Condition #1.1.4, and the applicant requested that Note #18 be amended to the wording shown on page 19.
4. The Director of Planning explained that the staff recommendation is the same as the previous recommendation of conditional approval made in February, 2005. Note #18 restricts high traffic-generating uses like drive-in banks, restaurants and convenience stores with fuel sales. Without these restrictions, the traffic conflicts on the arterial streets with the proposed openings close to the intersection, and the amount of traffic through the residential area to Wendell Way, are unacceptable. The additional information submitted by the staff is found on p.23-25.
5. There was no testimony in opposition.
6. On May 11, 2005, the Planning Commission voted 9-0 to recommend approval, with the conditions as set forth in the staff report, with the amendment to Condition #1.2.2, as requested by the applicant and accepted by staff (Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'). Condition #1.1.4 regarding Note 18 was not deleted.
7. On May 16, 2005, Brian D. Carstens filed a letter of appeal to Note #18 in Condition #1.1.4 (p.26).
8. The Site Specific conditions of approval required to be completed prior to scheduling this application on the City Council agenda have been satisfied (except Condition #1.1.4 which has been appealed), and the revised site plans are attached (p.17-18).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 15, 2005

REVIEWED BY: _____

DATE: August 15, 2005

REFERENCE NUMBER: FS\CC\200\CZ.05004 PUD

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for May 11, 2005 PLANNING COMMISSION MEETING

****As Revised and Recommended for Conditional Approval
by Planning Commission: May 11, 2005***

P.A.S.: Change of Zone #05004 Pine Garden PUD

PROPOSAL: Change the zoning designation from AG to R-3 PUD, and approve a development plan for 28 dwelling units and 22,000 square feet of commercial floor area.

LOCATION: 84th Street and Old Cheney Road

LAND AREA: 5.87 acres, more or less

WAIVERS:

1. Preliminary plat process.
2. Reduce private roadway width from 27 feet to 22 feet.
3. Reduce rear yard setback on Lots 1 through 20.
4. Reduce front yard setbacks on Lots 1 through 20.
5. Lot width to depth ratio.
6. Cul-de-sac radius for South 83rd Court.
7. Allow up to 2 non-resident employees for home occupations in units 11-20.
8. Allow up to 50% of the floor area in units 11-20 to be used for home occupations.
9. Allow commercial lots without frontage or access to a public street.

CONCLUSION: Staff found this change of zone and PUD in general conformance with the Comprehensive Plan and zoning ordinance under the previous proposal. As now proposed, this project presents significant issues related to traffic safety, neighborhood impact, and use intensity. City staff would continue to support this project as originally proposed by Applicant, but cannot support it without use limitations.

RECOMMENDATION:

Denial

Should the Planning Commission choose to recommend approval, the following waivers are acceptable:

1. Preliminary plat process.
2. Reduce private roadway width from 27 feet to 22 feet.
3. Reduce rear yard setback on Lots 1 through 20.
4. Reduce front yard setbacks on Lots 1 through 20.
5. Lot width to depth ratio.
6. Cul-de-sac radius for South 83rd Court.
7. Up to 2 non-resident employees for home occupations in units 11-20.
8. Up to 50% of floor area in units 11-20 used for home occupations.
9. Allow commercial lots without frontage or access to a public street.

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 90, 91, and 113 of Irregular Tracts, located in the SE 1/4 of Section 10 T9N R7E, Lancaster County, Nebraska

EXISTING LAND USE AND ZONING: Vacant AG Agricultural

SURROUNDING LAND USE AND ZONING:

North:	Single-family dwellings	R-3 Residential
South:	Lincoln Christian School	R-3 Residential
East:	Single-family dwellings	O-2 Suburban Office
	HiMark Golf Course	R-3 Residential
West:	Single-family dwellings	R-3 Residential

HISTORY:

Feb 2005	Planning Commission hearing on the first Pine Garden PUD proposal. Planning Commission voted to recommend conditional approval, consistent with staff conditions.
Sep 2000	Change of Zone #3207 approved changing the zoning designation to B-2 Planned Neighborhood Business. However, this change was vetoed by the Mayor.
May 1979	The zoning update changed the zoning designation for this property from A-A Rural and Public to AG Agricultural.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan identifies this area as Urban Residential. (F 25)

Maximize the community's present infrastructure investment by planning for residential and commercial development in areas with available capacity. This can be accomplished in many ways including encouraging appropriate new development on unused land in older neighborhoods, and encouraging a greater amount of commercial space per acre and more dwelling units per acre in new neighborhoods. (F-17)

Affordable housing should be distributed throughout the region to be near job opportunities and to provide housing choices within every neighborhood. Encourage different housing types and choices, including affordable housing, throughout each neighborhood for an increasingly diverse population. (F-18)

Transit, pedestrian, and bicycle networks should maximize access and mobility to provide alternatives and reduce dependence upon the automobile. Sidewalks should be provided on both sides of all streets, or in alternative locations as allowed through design standards or the Community Unit Plan process. (F 66)

Many activities of daily living should occur within walking distance. Neighborhoods should include homes, stores, workplaces, schools and places to recreate. (F 66)

Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods. (F-66)

The key to both new and existing urban neighborhoods is diversity. For new neighborhoods, it is having a greater mix of housing types and land uses. New neighborhoods should have a variety of housing types and sizes, plus commercial and employment opportunities. Developing a pedestrian orientation of buildings and streets is also a priority for new areas. (F-71)

Structure incentives to encourage more efficient residential and commercial development to make greater utilization of the community's infrastructure. Incentives may include financial, process and/or regulatory conditions. (F 72)

Revise pertinent codes and regulations in order to remove impediments to achieving mixed-use residential and commercial development. (F 72)

Develop new design standards that encourage density, optimize infrastructure costs, and help lower the overall cost of property development. (F-72)

TRAFFIC ANALYSIS: The Comprehensive Plan identifies 84th Street as a Principal Arterial, Old Cheney Road as a Minor Arterial, and Wendell Way as a Local Street, both now and in the future. (E49, F 103). This development proposes one access to 84th Street, one access to Old Cheney Road, and one access to Wendell Way.

Both 84th Street and Old Cheney Road are shown in the Comprehensive Plan for improvement to 4 through lanes plus turning lanes. The right-of-way standards for these improvements show 84th Street with 120 feet, and Old Cheney Road to the west with 100 feet. (F112) In addition, projects occurring at the intersection of arterial streets have greater right-of-way requirements which extend 2 blocks (approximately 700 feet) from the centerline. (F 112) In this case, the right-of-way needs increase to at least 130 feet.

Public Works is very opposed to allowing an access within the right turn lane due to past safety concerns in similar situations. Crashes occur from drivers not knowing whether another vehicle is turning at the drive or the corner ahead. These can either be rear-end crashes or more serious right angle types. Crashes also occur when motorists pull out of the driveway and try to cross all the lanes to get into the left turn lane. With the previous proposal, the applicant was able to convince city staff that by limiting the amount of development/trips they would have, it would not be a problem in this

situation. There was also a concern that anyone wanting to go north on 84th St would have to go through the existing residential neighborhood to the north and get out on Wendell Way. Limiting the development was a means of protecting the existing residences from excessive increases in traffic.

The concern on Old Cheney is the closeness of the driveway to the intersection. There will be accelerating traffic leaving a signal as well as motorists slowing down to turn into the driveway. They'll need to ensure sufficient storage and deceleration length for the right turn lane into the site.

UTILITIES: Utilities are available to serve this site. However, the proposed grading plan does not demonstrate that the commercial area can be served by sanitary sewer.

ENVIRONMENTAL CONCERNS: There is an existing row of mature trees located at approximately the boundary between the residential and commercial uses. These trees should be retained to serve as a buffer between the different uses. The plans indicate only a small number of the existing trees being removed, at a driveway location and within a building envelope. However, necessary grading changes may destroy all of these trees. Existing trees at the north boundary of the development should be retained as a buffer to existing single-family dwellings.

ALTERNATIVE USES: The existing AG zoning is not an appropriate urban zoning designation at this location. The most appropriate uses would be those permitted in the R-3 Residential district.

ANALYSIS:

1. This is a request to change the zoning designation from AG to R-3 PUD to allow for development of 28 dwelling units (only 20 shown) and 22,000 square feet of commercial/retail floor area.
2. The residential portion of this project is shown with 20 dwelling units in four 5-unit two-story buildings. The 10 units on the east side (units 11 through 20) are live/work units, capable of having home occupations that occupy up to 50% of the unit's floor area, and allowing up to 2 non-resident employees.
3. Additional parking is shown near the live/work residential units, in excess of the standard residential requirement.
4. There are no uses identified as permitted or prohibited for the commercial/retail area, therefore, it is premature to establish access to the area. For instance, the impact upon the residential area and existing residences cannot be determined. Also, access to 84th Street is through a right-turn lane. This was shown on the previous plan, and was acceptable to staff only because of the use limitations on the commercial/retail area. This access is not necessary for the residential area to function.

The overall concept may work, and the proposed access routes would be acceptable if combined with the use limitations as originally proposed by Applicant. Without an agreement on use prohibitions, the access as proposed cannot be supported.

This land is designated as urban residential in the Comprehensive Plan. Access to the site has already been established to come off Wendell Way to the north where homes have already been built. Applicant's proposed access to 84th St is into a future right hand turn lane. Having access into a right hand turn lane is not a good practice and could provide for future conflicts. Initially access into the right-hand turn lane was opposed. However, after long discussion, the access was agreed to, conditioned on limiting the intensity of the uses and traffic using the access point.

Since the access is into a right-hand turn lane, any commercial uses allowed should have very low demands on the peak hour. Land uses such as banks, restaurants and convenience stores have higher demands in the p.m. peak hour. This is the time when the right-hand turn lane would be a peak use. In addition to trying to keep the total number of trips low, there is the need to reduce the peak hour trips by prohibiting the types of uses which generate many trips in the peak hour. Thus, the prohibition on certain uses was included.

5. Although the revised PUD ordinance now allows for “a development plan not as detailed as the requirements for community unit plans or preliminary plats,” the plan still “shall provide sufficient information to identify parcels included, proposed land uses and design standards for buildings.” Here, additional information is needed to determine impacts on neighboring property and streets, grading impacts on trees to be preserved, and to demonstrate the commercial area can be served with sanitary sewer.
6. Signage for the live/work units is proposed to follow home occupation standards (2 square feet facing 83rd Court, and 20 square feet facing 84th Street. These signs will be nonilluminated, nonanimated, and nonreflective. Signage in the commercial/retail area will follow the standard PUD signage regulations.
7. The Health Department has identified a 24-inch underground natural gas pipeline in Old Cheney Road, and an 18-inch underground natural gas pipeline in 84th Street. They have requested that occupied structures be prohibited within hazard areas associated with these pipelines. The City has not adopted requirements addressing such hazard areas. Before requiring such setbacks, these hazard areas should be studied further. There is a Planning/Health Department committee reviewing similar community health and safety issues.
8. The waiver request for a smaller paving radius in the South 83rd Court cul-de-sac is satisfactory to the Public Works Department. Although the standard paving radius for public cul-de-sacs is 43.5', a 30' radius has been acceptable in private roadways.
9. The waiver request for reducing the standard 27' paving width in South 83rd Court is satisfactory.
10. The request to waive the requirement that commercial lots have frontage and access to a public street is unnecessary since the only commercial lot meets this requirement.
11. The Parks and Recreation Department will collect impact fees in lieu of park land, since Phares Park is located in close enough proximity to serve the recreational needs of the residents.

12. Comments from the Public Works Department are attached.

Should the Planning Commission choose to recommend approval, Staff recommends approval to all waivers except frontage and access for commercial lots, and the following conditions, including restoration of the use limitations as originally proposed by Applicant:

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the plans in the following ways:
 - 1.1.1 Remove the parenthetical "(20,400 s.f. shown)" from Note 1.
 - 1.1.2 Revise Note 12 to refer to "2" outlots.
 - 1.1.3 Remove the second sentence in note 15.
 - 1.1.4 Replace Note 18 with language identifying the following use limitations on: uses allowed in the commercial/retail area include office, medical office, commercial/retail, and up to 1,500 square feet of restaurant, but no drive-thru. The following uses are not permitted: banks and savings and loan associations, convenience stores and gasoline stations, car wash facilities, warehousing, self-storage, and industrial uses. Remove the phrase "and use not be unreasonably prohibited."
 - 1.2 Provide a sketch plan showing the following:
 - 1.2.1 Show that grading in the commercial/retail area can be accomplished to provide sanitary sewer service.
 - 1.2.2 ~~Show that~~ Revise the grading in the commercial/retail area ~~will provide a slope no greater than 3% between the driveway connection to Old Cheney Road and the connection between the commercial/retail and residential uses to the satisfaction of Public Works & Utilities.~~ **(**Per Planning Commission at the request of the applicant and agreed upon by Public Works & Utilities, 05/11/05**)**
 - 1.2.3 Show the necessary retaining wall between the residential and commercial/retail areas. Show that grading for the retaining wall can be conducted to preserve those trees identified to remain.

1.2.4 Show the sidewalk along the northern portion of Outlot B located at least 9-1/2 feet from the back of curb.

1.3 Provide detention calculations.

1.4 Provide a drainage study and pipe sizing calculations.

2. This approval permits 28 dwelling units and 22,000 sq.ft. of commercial floor area, with waivers granted for the following: the preliminary plat process; reduce rear and front yard setbacks on Lots 1 through 20 as shown on the plans; Lots 1 through 20 may exceed the width to depth ratio as shown on the plans; nonstandard cul-de-sac radius for South 83rd Court as shown on the plans; 22 foot paving width in South 83rd Court as shown on the plans; units 11-20 may have up to 2 non-resident employees in home occupations and may use up to 50% of the floor area for home occupations.

3. If any final plat on all or a portion of the approved planned unit development is submitted five (5) years or more after the approval of the planned unit development, the city may require that a new planned unit development be submitted, pursuant to all the provisions of section 26.31.015. A new planned unit development may be required if the subdivision ordinance, the design standards, or the required improvements have been amended by the city, and as a result, the planned unit development as originally approved does not comply with the amended rules and regulations.

4. Before the approval of a final plat, the private roadway improvements, sidewalks, sanitary sewer system, water system, drainage facilities, land preparation and grading, sediment and erosion control measures, storm water detention/retention facilities, drainageway improvements, street lights, landscaping screens, street trees, and street name signs, must be completed or provisions (bond, escrow or security agreement) to guarantee completion must be approved by the City Law Department. The improvements must be completed in conformance with adopted design standards and within the time period specified in the Land Subdivision Ordinance.

5. Permittee agrees:

to complete the paving of South 83rd Court shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of sidewalks along the west side of South 84th Street, the north side of Old Cheney Road, and both sides of South 83rd Court as shown on the final plat within four (4) years following the approval of the final plat.

to complete the public water distribution system to serve this plat within two (2) years following the approval of the final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of the final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of the final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of the final plat

to complete the installation of public street lights along the west side of South 84th Street and the north side of Old Cheney Road within two (2) years following the approval of the plat.

to complete the installation of private street lights along South 83rd Court within this plat within two (2) years following the approval of the final plat.

to complete the planting of the street trees along the west side of South 84th Street, the north side of Old Cheney Road, and both sides of South 83rd Court within this plat within four (4) years following the approval of the final plat.

to complete the planting of the landscape screen within this plat within two (2) years following the approval of the final plat.

to complete the installation of the street name signs within two (2) years following the approval of the final plat.

to complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to complete the public and private improvements shown on the Planned unit Development.

to retain ownership of or the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis and to maintain the plants in the medians and islands on a permanent and continuous basis. However, the subdivider may be relieved and discharged of this maintenance obligation upon creating, in writing, a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance. The subdivider shall not be relieved of such maintenance obligation until the private improvements have been satisfactorily installed and the documents creating the association have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

to continuously and regularly maintain the street trees along the private roadways and landscape screens.

to submit to the lot buyers and home builders a copy of the soil analysis.

to pay all design, engineering, labor, material, inspection, and other improvement costs for the right turn lanes in Old Cheney Road and South 84th Street, and for the improvements in 84th Street and Wendell Way necessary to allow left turning movements at the intersection.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to protect the trees that are indicated to remain during construction and development.

to properly and continuously maintain and supervise the private facilities which have common use or benefit, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of storm water detention/retention facilities as they were designed and constructed within the development, and that these are the responsibility of the land owner.

to relinquish the right of direct vehicular access to South 84th Street and Old Cheney Road, except as shown.

General:

6. Before receiving building permits:

- 6.1 The permittee shall have submitted a revised and reproducible final plan and the plans are acceptable:
- 6.2 The construction plans shall comply with the approved plans.
- 6.3 Final plats shall be approved by the City.
- 6.4 Applicant agrees to pay for the design and installation of the right turn lane in Old Cheney Road.
- 6.5 Applicant agrees to pay for the design and construction changes necessary to allow left turns from Wendell Way onto 84th Street.

STANDARD CONDITIONS:

7. The following conditions are applicable to all requests:

- 7.1 Before occupying the buildings all development and construction shall have been completed in compliance with the approved plans.
- 7.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.

- 7.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- 7.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 7.5 The City Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Prepared by:

Greg Czaplewski
441-7620, gczaplewski@lincoln.ne.gov

Date: April 28, 2005

Applicant: Realty Trust Group
and 2300 South 48th Street
Owner: Lincoln, NE 68506
484.8484

Contact: Brian D. Carstens and Associates
601 Old Cheney, Suite C
Lincoln, NE 68512
434.2424

CHANGE OF ZONE NO. 05004 PINE GARDEN PLANNED UNIT DEVELOPMENT

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 11, 2005

Members present: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff addressed the history of the project, which was initially submitted in January of this year. The Planning Commission held the public hearing in February. The staff recommendation was conditional approval at that time. The applicant has made most of the changes that were requested and resubmitted in April; however, a couple of significant changes from the original proposal were shown on the resubmittal, which is the reason this application is coming back before the Commission today.

The first significant change is in the commercial area, showing several pad sites and a driveway connecting the commercial area to the residential. The other change was the elimination of use limitations that were originally proposed.

Czaplewski also submitted the "notes" on the plan. Some of the conditions of approval require changes to these "notes" which are being requested to be changed by staff. He also submitted the "notes" as originally proposed in January. The staff conditions require four "note" changes. Condition #1.1.4 relates to Note 18, which does not identify any specific uses for the commercial area and does not identify any uses that are prohibited in that area. As originally proposed, Note 18 listed some use prohibitions which were arrived at between the applicant and city staff, and part of the reason for prohibiting certain uses had to do with access to the site. This project has a commercial and a residential element, with the residential being served from the north off of Wendell Way with access off 84th Street and another commercial access off of Old Cheney Road. Those accesses were supported by staff as long as there were use limitation on the commercial uses.

Pearson noted that the staff is recommending denial; however, the conditions of approval provided by staff takes it back to what was approved in February. Czaplewski concurred. The staff is recommending denial as now proposed. The conditions submitted would essentially take it back to the way it was in January, including the use limitations. The January plan was never taken forward to the City Council.

Marvin inquired about the wait period if the Planning Commission and City Council deny the proposal. Ray Hill of Planning staff advised that the code requirement states that if a new application is "substantially similar", they would not be able to file a new application for one year.

Staff would need to make the determination as to “substantially similar”.

Proponents

1. Mike Marsh of Realty Trust Group, 2300 S. 48th Street, gave a brief history on the property. In September of 2000, the entire property was approved for B-2 zoning and subsequently vetoed by the Mayor. Now, five years later, they are back and have worked with the Planning Department on a proposal for three-fourths townhomes and one-fourth commercial. The only reason this application has come back before the Commission is Note 18, Condition #1.1.4. In February, there was a mistake in the sense that he had the understanding and agreement with the Planning Department verbally that the applicant would come back before the Planning Commission when they had a use in mind for the commercial area, and that it would not be unreasonably prohibited. The only reason this application is back before the Commission is to correct a mistake that was made and to which the applicant had not agreed. It is a burden to have to come back with the specific use when they know what it is going to be, and they want reasonableness to prevail.

2. Brian Capstans appeared on behalf of **Realty Trust Group** and requested an amendment to Condition #1.2.2:

~~Show that Revise the grading in the commercial/retail area will provide a slope no greater than 3% between the driveway connection to Old Cheney Road and the connection between the commercial/retail and residential uses to the satisfaction of Public Works & Utilities.~~

Carstens also requested that #1.1.4 regarding Note 18 be deleted.

There was no testimony in opposition.

Czaplewski reiterated that staff is recommending denial of the project, including the waivers. If the Commission wants to recommend approval, the conditions set forth in the staff report should be imposed, which includes approval of all of the waivers, except the waiver for frontage and access.

Marvin Krout, Director of Planning, explained that the staff recommendation was written as a denial as the plan has been changed. But he clarified that the staff is really recommending what was recommended previously – the staff could agree to this plan with the driveway access close to the intersection (which Public Works would never normally approve because we were intending to limit the use so that it would not affect the intersection and the residential to the north). Possibly, it would be easier to think about conditional approval, with the same conditions as recommended previously. Condition #1.1.4 restricts it from being a high traffic use. The driveway was part of an agreement and understanding we thought we had with the applicant about limiting the uses. The applicant did not really understand that they would be bound by the language in Note 18 or that it would really mean something, so they are asking for that language to be stricken.

Bills-Strand asked whether a bank generates that much traffic. Krout stated that a bank of 6,000 sq. ft. with drive-thru windows is a very big peak hour traffic generator. The problem is that a lot of cars are moving in and out of traffic and a 6,000 sq. ft. bank could generate 1200 or more trips per day.

Pearson asked whether the applicant could submit their previous approval to the City Council if this is denied. Marvin indicated that this option was offered to the applicant, but the staff would need to inform the Council that that is not what was advertised. We urged the applicant to go back through the Planning Commission to properly advertise the change.

Sunderman noted that the applicant is requesting a trip count restriction. Why not that as opposed to use restriction? Krout does not believe the applicant and staff would be able to come to agreement on a trip cap because they would want something above 1200 trips per day. That discussion about establishing a number has not occurred because the applicant does not want to be restricted on uses. If they were willing to restrict to the general traffic cap, that would mean lower traffic generated uses and he believes they could come to agreement. But, Marvin believes this is an argument about a bank or convenience type uses.

Dennis Bartels of Public Works agreed with the proposed amendment to Condition #1.2.2.
Response by the Applicant

Mike Marsh reiterated that Note #18 (Condition #1.1.4) is the only point to be dealt with at this time. A vote for approval, deleting Condition #1.1.4, allows Realty Trust Group to come back before the Planning Commission once they have a use.

ACTION BY PLANNING COMMISSION:

May 11, 2005

Larson moved approval, with the conditions set forth in the staff report, with amendment to Condition #1.2.2, seconded by Carlson. (The motion does not delete Condition #1.1.4).

Carlson's concern about Condition #1.1.4 is the language, "and use not be unreasonably prohibited". He does not know what that means. It is much clearer to designate the reasonable uses.

Motion for approval, with conditions set forth in the staff report, with the amendment to Condition #1.2.2 requested by the applicant, carried 9-0: Carroll, Pearson, Marvin, Krieser, Sunderman, Carlson, Taylor, Larson and Bills-Strand voting 'yes'. This is a recommendation to the City Council.



2002 aerial

Change of Zone #05004 Pine Garden S. 84th & Old Cheney Rd.

Zoning:

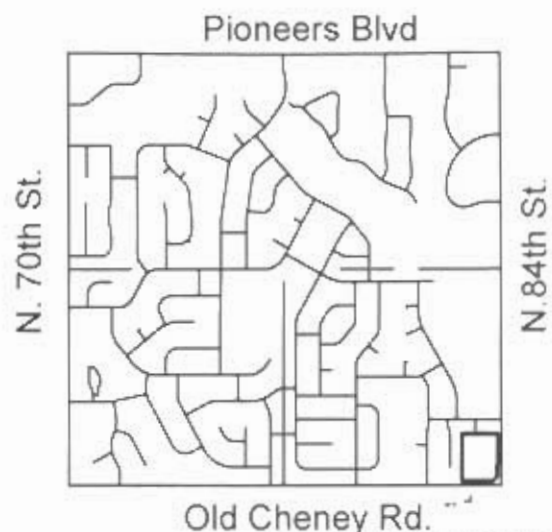
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 10 T09N R7E



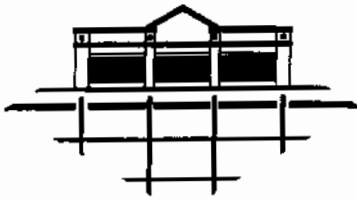
Zoning Jurisdiction Lines

City Limit Jurisdiction



015

Lincoln City - Lancaster County Planning Dept



BRIAN D. CARSTENS AND ASSOCIATES
LAND USE PLANNING RESIDENTIAL & COMMERCIAL DESIGN
601 Old Cheney Road, Suite C Lincoln, NE 68512 Phone: 402.434.2424

April 14, 2005

Mr. Marvin Krout, AICP
Director of Planning
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

RE: CHANGE OF ZONE - #05004- 'AG' TO 'R-3 P.U.D.'
PINE GARDEN- SOUTH 84TH AND OLD CHENEY ROAD

Dear Marvin,

On behalf of Realty Trust Group, Inc, I am resubmitting the above mentioned application, to be reviewed again by the Planning Commission.

As you are aware, my client is/ was unhappy with a general note that was part of the original application that was previously approved by the Planning Commission. After lengthy debate with all parties, we are submitting the revised plans for your review.

We have revised the plans to remove the site details from Lot 21. We are noting the maximum square footage that is allowed. However, no specifics are shown or more importantly, prohibited at this time.

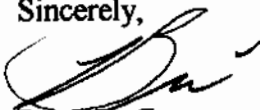
General note #18 has been revised as follows;

"The owner of Lot 21, the commercial designated portion, shall come forth with a specific use to be approved by the City Council at such time, and use not be unreasonably prohibited."

I had previously offered an idea to Steve Henrichsen, that would have placed a maximum trip generation 'cap' on Lot 21. That idea was unacceptable to Steve. I feel the trip cap is a good idea, as it offers the developer the flexibility they need yet, protecting the City from unexpected trip generation from the site.

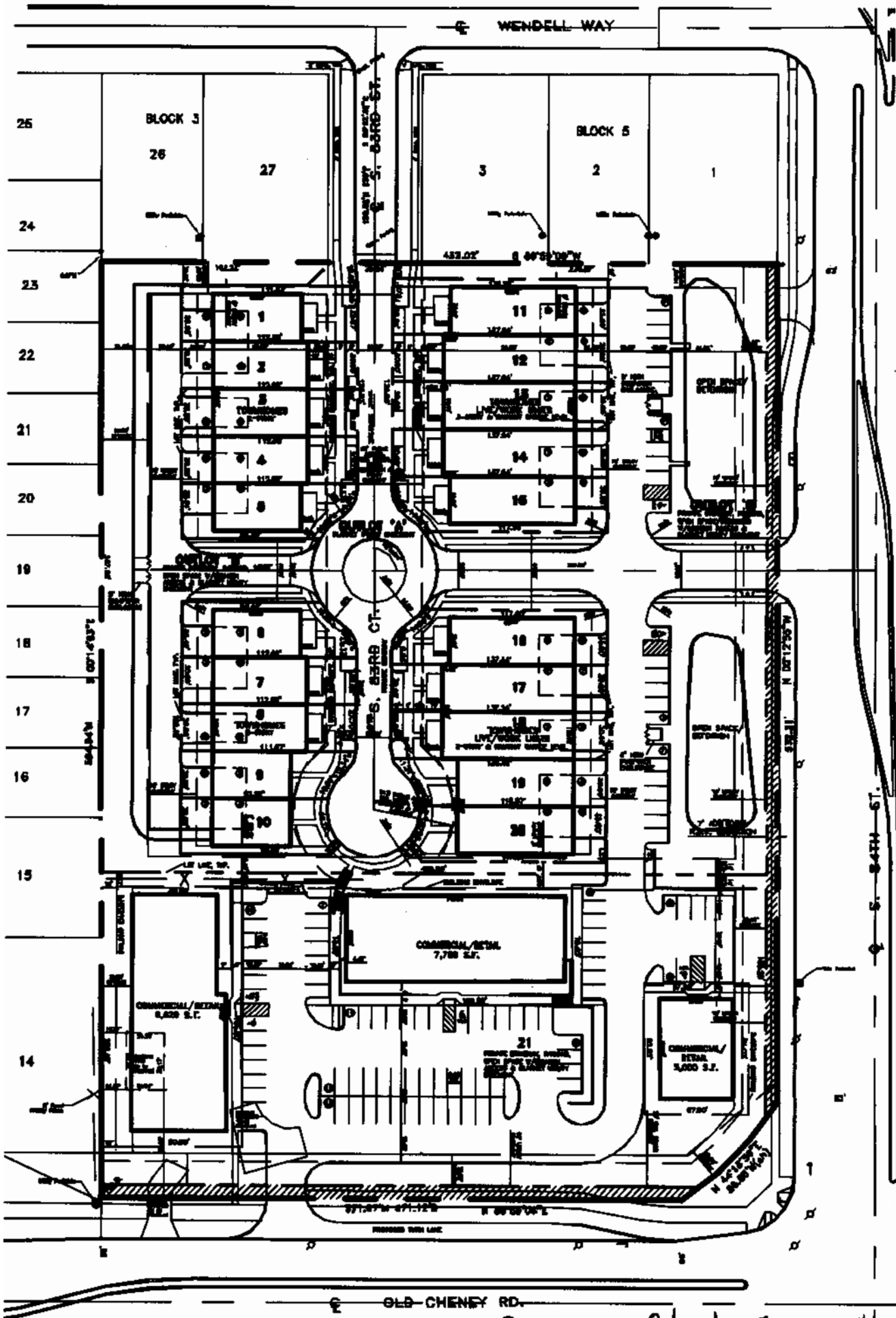
Please feel free to contact me if you have any further questions.

Sincerely,



Brian D. Carstens

CC: Mike Marsh



PROPOSED

GENERAL NOTES:

1. THE PLANNED UNIT DEVELOPMENT ALLOWS 22,000 S.F. OF COMMERCIAL SPACE (19,320 S.F. SHOWN) AND 28 DWELLING UNITS (20 UNITS SHOWN). SEE NOTE #17.
2. THE OWNER/ DEVELOPER RESERVES THE RIGHT TO BUILD ANYWHERE WITHIN THE BUILDING ENVELOPES SHOWN ON THIS PLANNED UNIT DEVELOPMENT.
3. BUILDING HEIGHT SHALL NOT EXCEED 35 FEET (R-3).
4. DIRECT VEHICULAR ACCESS TO SOUTH 84TH STREET IS HEREBY RELINQUISHED EXCEPT AS SHOWN. DIRECT VEHICULAR ACCESS TO OLD CHENEY ROAD IS HEREBY RELINQUISHED EXCEPT AS SHOWN.
5. COMMON AND PUBLIC ACCESS EASEMENTS ARE HEREBY GRANTED OVER ALL PRIVATE DRIVES, DRIVING AISLES, PARKING STALLS AND SIDEWALKS SHOWN.
6. ALL SIGNAGE SHALL COMPLY WITH CHAPTER 27.69.340 OF THE LINCOLN MUNICIPAL CODE AND THIS PLANNED UNIT DEVELOPMENT. THE RESIDENTIAL LIVE/WORK UNITS MAY HAVE NONILLUMINATED, NONANIMATED, AND NONREFLECTIVE SIGNS NOT EXCEEDING 2 SQUARE FEET IN SIZE FACING SOUTH 83RD COURT, AND NOT EXCEEDING 20 SQUARE FEET IN SIZE FACING SOUTH 84TH STREET.
7. ALL EXTERIOR LIGHTING SHALL COMPLY TO THE DESIGN STANDARDS AS ADOPTED BY THE CITY OF LINCOLN.
8. PRIVATE ROADWAYS SHALL BE SURFACED WITH 6 INCHES OF PORTLAND CEMENT OR 5 INCHES OF PORTLAND CEMENT BASE AND 2-1/2 INCHES OF ASPHALTIC CONCRETE SURFACE OR 6 INCHES OF ASPHALTIC CONCRETE. ALL PRIVATE ROADWAYS SHALL HAVE A 5 INCH CROWN AND A 6 INCH RAISED CURB.
9. ALL PRIVATE ROADWAYS/DRIVEWAYS SHALL BE 22 FEET WIDE UNLESS OTHERWISE NOTED.
10. SIDEWALKS ALONG PRIVATE ROADWAYS SHALL BE A MINIMUM OF 4 FEET IN WIDTH AND LOCATED A MINIMUM OF 4 FEET FROM THE BACK SIDE OF THE CURB. SIDEWALKS SHALL BE A MINIMUM OF 4 INCH THICK CONCRETE, 5 INCH THICK AT DRIVEWAY CROSSINGS.
11. ALL PARKING AREAS SHALL BE SURFACED WITH A MINIMUM OF 5 INCHES OF CLASS 'A' PORTLAND CEMENT OR 6 INCHES OF ASPHALTIC CONCRETE. A 6 INCH RAISED CURB BARRIER SHALL BE PROVIDED AT THE PERIMETER.
12. THIS PLANNED UNIT DEVELOPMENT CONTAINS 20 MULTI-FAMILY ATTACHED LOTS AND 1 COMMERCIAL LOT. THE TOTAL NUMBER OF LOTS ARE 21 AND 2 OUTLOTS.
13. ALL CURVILINEAR DIMENSIONS ARE CHORD LENGTHS.
14. PRIVATE ROADWAYS, IMPROVEMENTS AND MEDIANS SHALL BE MAINTAINED BY THE OWNERS ASSOCIATION.
15. OUTLOTS 'A' & 'B' SHALL BE OWNED AND MAINTAINED COLLECTIVELY BY THE OWNER/ OWNERS OF LOTS 1 THROUGH 20.
16. THE DEVELOPER AGREES TO COMPLY WITH THE DESIGN STANDARDS OF THE CITY OF LINCOLN FOR EROSION CONTROL AND SEDIMENTATION DURING AND AFTER LAND PREPARATION AND TO SUBMIT A SEEDING AND MAINTENANCE SCHEDULE BEFORE SITE GRADING IS DONE. THE DEVELOPER WILL BE RESPONSIBLE FOR CONTROLLING OFF-SITE DUST EMISSIONS IN ACCORDANCE WITH LINCOLN-LANCASTER COUNTY AIR POLLUTION REGULATIONS AND STANDARDS ARTICLE 2, SECTION 32.
17. LOTS 11 THROUGH 20 SHALL BE ALLOWED TO HAVE EXPANDED HOME OCCUPATIONS. EACH DWELLING UNIT SHALL BE PERMITTED A HOME OCCUPATION USE WHICH ALLOWS UP TO TWO EMPLOYEES (WHO DO NOT RESIDE ON THE PREMISES) AND UP TO 50% OF THE FLOOR AREA OF THE DWELLING UNIT IN USE FOR THE HOME OCCUPATION.
18. THE OWNER OF LOT 21, THE COMMERCIAL DESIGNATED PORTION, SHALL COME FORTH WITH A SPECIFIC USE TO BE APPROVED BY THE CITY COUNCIL AT SUCH TIME, AND USE NOT BE UNREASONABLY PROHIBITED.
19. AIR CONDITIONING, MECHANICAL UNITS AND DUMPSTERS ARE PROHIBITED ON LOT 21 ADJACENT TO THE WEST PROPERTY LINE.

STAFF RECOMMENDATION

GENERAL NOTES:

1. THE PLANNED UNIT DEVELOPMENT ALLOWS 22,000 S.F. OF COMMERCIAL SPACE (20,400 S.F. SHOWN) AND 28 DWELLING UNITS (20 UNITS SHOWN).
2. THE OWNER/ DEVELOPER RESERVES THE RIGHT TO BUILD ANYWHERE WITHIN THE BUILDING ENVELOPES SHOWN ON THIS PLANNED UNIT DEVELOPMENT.
3. BUILDING HEIGHT SHALL NOT EXCEED 35 FEET (R-3).
4. DIRECT VEHICULAR ACCESS TO SOUTH 84TH STREET IS HEREBY RELINQUISHED EXCEPT AS SHOWN.
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6. ALL SIGNAGE SHALL COMPLY WITH CHAPTER 27.69.340 OF THE LINCOLN MUNICIPAL CODE AND THIS PLANNED UNIT DEVELOPMENT. NON-ILLUMINATED WALL SIGNS NOT EXCEEDING 20 S.F. SHALL BE PERMITTED ON LOTS 11 THROUGH 20. SIGNAGE FOR LOTS 21 THROUGH 23 SHALL FOLLOW 'O-2'/'O-3' ZONING REGULATIONS.
7. ALL EXTERIOR LIGHTING SHALL COMPLY TO THE DESIGN STANDARDS AS ADOPTED BY THE CITY OF LINCOLN.
8. PRIVATE ROADWAYS SHALL BE SURFACED WITH 8 INCHES OF PORTLAND CEMENT OR 5 INCHES OF PORTLAND CEMENT BASE AND 2-1/2 INCHES OF ASPHALTIC CONCRETE SURFACE OR 6 INCHES OF ASPHALTIC CONCRETE. ALL PRIVATE ROADWAYS SHALL HAVE A 5 INCH CROWN AND A 6 INCH RAISED CURB.
9. ALL PRIVATE ROADWAYS/DRIVEWAYS SHALL BE 25 FEET WIDE UNLESS OTHERWISE NOTED.
10. SIDEWALKS ALONG PRIVATE ROADWAYS SHALL BE A MINIMUM OF 4 FEET IN WIDTH AND LOCATED A MINIMUM OF 4 FEET FROM THE BACK SIDE OF THE CURB. SIDEWALKS SHALL BE A MINIMUM OF 4 INCH THICK CONCRETE, 5 INCH THICK AT DRIVEWAY CROSSINGS.
11. ALL PARKING AREAS SHALL BE SURFACED WITH A MINIMUM OF 5 INCHES OF CLASS 'A' PORTLAND CEMENT OR 6 INCHES OF ASPHALTIC CONCRETE. A 6 INCH RAISED CURB BARRIER SHALL BE PROVIDED AT THE PERIMETER.
12. THIS PLANNED UNIT DEVELOPMENT CONTAINS 20 MULTI-FAMILY ATTACHED LOTS AND 3 COMMERCIAL LOTS. THE TOTAL NUMBER OF LOTS ARE 23 AND 3 OUTLOTS.
13. ALL CURVILINEAR DIMENSIONS ARE CHORD LENGTHS.
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15. OUTLOTS 'A' & 'B' SHALL BE OWNED AND MAINTAINED COLLECTIVELY BY THE OWNER/ OWNERS OF LOTS 1 THROUGH 20. OUTLOT 'C' SHALL BE OWNED AND MAINTAINED COLLECTIVELY BY THE OWNER/ OWNERS OF LOTS 21, 22 AND 23.
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18. LOTS 21, 22 & 23 SHALL HAVE PERMITTED USES OF OFFICE, MEDICAL OFFICE, COMMERCIAL/RETAIL AND LESS THAN 1,500 SQUARE FEET OF RESTAURANT (NO DRIVE-THRU). THE FOLLOWING USES ARE NOT PERMITTED: BANKS AND SAVINGS AND LOAN, CONVENIENCE STORES AND GASOLINE STATIONS, AUTOMOBILE CAR WASH FACILITIES, WAREHOUSING, SELF STORAGE AND INDUSTRIAL USES.
19. AIR CONDITIONING, MECHANICAL UNITS AND DUMPSTERS ARE PROHIBITED ON LOT 21 ADJACENT TO THE WEST PROPERTY LINE.

Memorandum

To:	Greg Czaplewski, Planning Department
From:	Chad Blahak, Public Works and Utilities Dennis Bartels Public Works and Utilities
Subject:	Pine Garden PUD CZ #05004
Date:	April 26, 2005
cc:	Randy Hoskins

Engineering Services has reviewed the submitted plans for the Pine Garden PUD, located on the northwest corner of South 84th Street and Old Cheney Road, and has the following comments:


- **Sanitary Sewer** - The following comments need to be addressed.
 - (1.1) The future commercial/retail area is shown to connect to a proposed sewer along Old Cheney Road. However, most of this area are shown to be approximately 10' below the grades along Old Cheney. Proposed grading needs to be shown for the area of the commercial uses to determine if the lots can be served as shown.
- **Water Main** - The water system is satisfactory.
- **Grading/Drainage** - The following comments need to be addressed.
 - (3.1) Detention calculations will need to be submitted with this plat. Although there are areas that are shown as detention areas, without the calculations there is no way to determine if the detention areas shown will be sufficient to satisfy the detention requirements. Depending on pipe sizing, the grading plan for the detention may not work.
 - (3.2) The driveway connection between the commercial area and the residential area does not appear to be desirable given existing grades on the site. As shown there is approximately 24' of elevation difference between the driveway connection to Old Cheney Road and the connection between the commercial and residential. This would require an average of 5.5% slope through the commercial area. Most commercial developments use a maximum of 3% slope.
 - (3.3) It appears that a retaining wall will be required between the future commercial area and the residential area. The plans indicate that existing trees will be saved in this location. The needed construction and grading will most likely destroy these trees. If the trees are shown to be saved the wall and future grading for the commercial area should be shown indicating how the trees are going to be saved.
- **Streets/Paving** - The following comments need to be addressed.

April 26, 2005

- (4.1) Public Works approves the waiver of design standards for permanent turnaround geometry in a private street.
- (4.2) The requested waiver of required paving width for South 83rd Street is approved by Public Works as separate setbacks are shown creating two unobstructed through lanes.
- (4.3) The previous submittal for this plat referenced use limitations on the commercial area of this plat. The use limitations were meant to limit commercial traffic volume that would pass through the residential portion of this plat to and from the intersection of 84th and Wendell Way and the drive access in the 84th Street turn lane. Public Works recommends denial of this plat as shown without use restrictions. If this plat is approved, the use restrictions as shown on the original submittal for this PUD need to be identified on these plans.

General - The information shown on the preliminary plat relating to the public water main system, public sanitary sewer system, and public storm sewer system has been reviewed to determine if the sizing and general method providing service is satisfactory. Design considerations including, but not limited to, location of water main bends around curves and cul-de-sacs, connection of fire hydrants to the public main, temporary fire hydrant location, location and number of sanitary sewer manholes, location and number of storm sewer inlets, location of storm sewer manholes and junction boxes, and the method of connection storm sewer inlets to the main system are not approved with this review. These and all other design considerations can only be approved at the time construction drawings are prepared and approved.

MEMORANDUM

TO: Planning Commission
FROM: Greg Czaplewski, Planning Department 
SUBJECT: Change of Zone #05004, Pine Garden PUD
DATE: May 6, 2005
CC: Brian Carstens
Mike Marsh

Section 1.1 of the Conditions requires revisions to some site plan notes. Attached are two documents to clarify these revisions.

- A. A copy of the notes from the site plan so you can see how they are affected by the revisions.
- B. A copy of the site plan notes proposed by the Applicant when this project was before the Planning Commission the first time. This was included as additional information related to Condition 1.1.4, which asks Applicant to revise note 18 back to the language they originally proposed.

Thank you.

**Change of Zone #05004
Pine Garden PUD**

Site Plan notes as now proposed by Applicant

GENERAL NOTES:

1. THE PLANNED UNIT DEVELOPMENT ALLOWS 22,000 S.F. OF COMMERCIAL SPACE (20,400 S.F. SHOWN) AND 28 DWELLING UNITS (20 UNITS SHOWN). SEE NOTE #17.
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**Change of Zone #05004
Pine Garden PUD**

Site Plan notes as originally proposed by Applicant

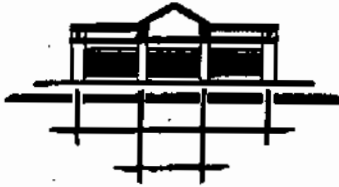
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19. AIR CONDITIONING, MECHANICAL UNITS AND DUMPSTERS ARE PROHIBITED ON LOT 21 ADJACENT TO THE WEST PROPERTY LINE.

05/13/2005 15:26 FAX 4024340467

CARSTENS & ASSOCIATES

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BRIAN D. CARSTENS AND ASSOCIATES
LAND USE PLANNING RESIDENTIAL & COMMERCIAL DESIGN
601 Old Cheney Road, Suite C Lincoln, NE 68512 Phone: 402.434.2424

May 13, 2005

Ms. Joan Ross, City Clerk
City of Lincoln
555 South 10th Street
Lincoln, NE 68608

RE: APPEAL OF PLANNING COMMISSION APPROVAL
PINE GARDEN P.U.D. - CHANGE OF ZONE#05004
SOUTH 84TH STREET AND OLD CHENEY ROAD

Dear Joan,

On behalf of Realty Trust Group, Inc., I am 'appealing' the Planning Commission approval of the above mentioned zoning application to the Lincoln City Council.

Realty Trust Group, Inc., specifically wants to remove 'condition 1.1.4' from the list of items that need to be revised.

Please contact me if you have any further questions.

Sincerely,

Brian D. Carstens

Co: Mike Marsh- Realty Trust Group, Inc.